HIGH COURT OF JUDICATURE AT BILASPUR: CHHATTISGARH

DIVISION BENCH

CORAM: **HON'BLE SHRI H.L. DATTU, CJ. &**
HON'BLE SHRI V.K. SHRIVASTAVA, J.

Writ Petition No.983 of 2002.

PETITIONER Ratanlal Mahobia, aged about 58 years, S/o. Late Dukhram Mahobia, Accountant, Janpad Panchayat, Bagbahar, Distt. Mahasamund (C.G.)

VERSUS

RESPONDENTS

1. State of Chhattisgarh, Through P.S. Panchayat & Rural Development, Mantralaya, DKS Bhawan, Raipur (C.G.)
2. Commissioner, Panchayat & Rural Development Department, Raipur (C.G.)
3. Chief Executive Officer Janpad Panchayat, Bagbahara, Distt. Mahasamund (C.G.)
4. President, Janpad Panchayat, Bagbahara, distt. Mahasamund (C.G.)

Present: Shri Kishore Bhaduri, counsel for the petitioner.
Shri A.S. Kachhawaha, G.A. for the State.

ORAL ORDER

(Passed on 16th March, 2007)

The following oral order of the Court was passed by H.L. Dattu, CJ.

The petitioner was working as an Accountant in Janpad Panchayat, Bagbahar, District Mahasamund. In this petition filed under Articles 226/227 of the Constitution of India, the petitioner is seeking the following reliefs.

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"(i) The Rule 33 (1) be declared as ultra virus being discriminatory.

(ii) The respondents be directed to increase the age of superannuation of the like employees of Panchayat from 58 to 60 years.

(iii) The respondents be directed further to absorb the petitioner as an employee for a period of two years – or up to his age of 60 years with all financial and monetary benefits for which the petitioner is entitled.

(iv) Any other relief, order or directions, which this Hon'ble Court deems fit and proper in the present circumstances of the case, may also kindly be granted."

(2) During the pendency of this writ petition, the respondents have amended the Rule 33 (1) of the M.P. (Chhattisgarh) Panchayat Service (Recruitment and General Conditions of Service) Rules 1999 ('the Rules' for short) under which the retirement age of all the employees working in Panchayat is fixed as 60 years.

(3) In view of this amendment, challenge of the petitioner in so far as Rule 33 (1) of the Rules being ultra vires, unconstitutional, discriminatory etc. need not be considered by us. There is yet another prayer by the petitioner and that has been vociferously argued by Shri Kishore Bhaduri, learned counsel appearing for the petitioner. At the outset let us state that the submission made by the learned counsel for the petitioner does not merit consideration, but since it has been argued by Shri Kishore Bhaduri, we intend to answer the same.

(4) Admittedly, the petitioner was an Accountant, i.e. he was not a teaching staff or a Class-IV employee. The rule that was prevailing when the writ petition was filed specifically categorized two types of employees i.e. employees other than teaching staff & Class-IV employees and employees who are teaching staff and Class-IV. For the first category, the age of retirement was 58 years and second category the age of retirement was 60 years.

(5) Since the petitioner was working as an Accountant, he was asked to retire at the age of 58 years. The Rule has been amended prospectively by allowing all the employees working in Panchayat to retire at the age of 60 years. Since the rule has been given effect to prospectively, benefit of that rule cannot be extended to a person who has already retired from the service after attaining the age of superannuation under the rule that was existing at the particular point of time.

(6) In view of the above, submission of the learned counsel appearing for the petitioner requires to be rejected and accordingly it is rejected. Ordered accordingly.

Sd/-
Chief Justice

Sd//-
V.K.Shrivastava
Judge